

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

CURTIS HERTEL, the Register of Deeds and Representative of INGHAM COUNTY; and NANCY HUTCHINS, the Register of Deeds and Representative of BRANCH COUNTY, both as Class Representatives of all 83 counties in the State of Michigan,

Case No. 12-00174
Hon. Robert Holmes Bell

Plaintiff,

v.

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., MERSCORP, INC., JEANNE KIVI, ELLEN COON, MARSHALL ISAACS, BANK OF AMERICA N.A., JP MORGAN CHASE & CO., CHASE HOME MORTGAGE CORPORATION f/k/a CHASE HOME FINANCE, WELLS FARGO BANK, N.A., CITIMORTGAGE INC., eTITLE AGENCY INC., 1ST CHOICE TITLE SERVICES INC., ATTORNEYS TITLE AGENCY LLC, f/k/a WARRANTY TITLE AGENCY LLC, and FEDERAL NATIONAL MORTGAGE ASSOCIATION, and JOHN DOE as any other authorized signers for MERS or MERSCORP, INC., and Defendants JOHN DOE Corporations I – MMM,

Defendants.

WELLS FARGO BANK, N.A.'S MOTION TO DISMISS

Defendant, Wells Fargo Bank, N.A., by its counsel, Plunkett Cooney, moves under Federal Rule of Civil Procedure 12(b)(6), to dismiss all claims against it in the Complaint filed by Plaintiffs Curtis Hertel, Jr. as the Register of Deeds and Representative of Ingham County and Nancy Hutchins, as the Register of Deeds and Representative of Branch County (together “Plaintiffs”).

The Court should grant the Motion for several reasons. Most fundamentally, Plaintiffs lack the power to file a lawsuit with respect to uncollected taxes because that power has not been conferred on them by statute. Dismissal is also required because no private right of action exists for violation of the real estate transfer tax statutes on which Plaintiffs claim relief. Finally, the Complaint is devoid of the factual allegations necessary to raise a right to relief beyond the speculative level. The Complaint's bare assertions and legal conclusions do not state a claim that is plausible on its face.

In support of its motion, Defendant relies upon the attached brief. Pursuant to Local Rule 7.1(d), on January 17, 2013, Defendant's counsel attempted to contact Plaintiffs' counsel, Daniel P. Marsh, by telephone to explain the nature of this Motion but was not able to obtain concurrence in the relief sought.

WHEREFORE, Defendant, Wells Fargo Bank, N.A. respectfully requests that the Court dismiss Plaintiffs' Complaint with prejudice, and award any further relief the Court deems just and reasonable under the circumstances.

Respectfully submitted,

/s/ Matthew J. Boettcher
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Date: January 17, 2013

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record via ECF E-Filing System on January 17, 2013.

BY:

Signature: /s/ Matthew J. Boettcher _____